

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

LAWRENCE JAMES COOK JR.

Appellant

No. 453 WDA 2013

Appeal from the Judgment of Sentence July 24, 2012
In the Court of Common Pleas of Washington County
Criminal Division at No(s): CP-63-CR-0000780-2011

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and OTT, J.

MEMORANDUM BY OTT, J.:

FILED DECEMBER 31, 2013

Lawrence James Cook, Jr. appeals from the judgment of sentence imposed on July 24, 2012, in the Court of Common Pleas of Washington County, following his negotiated guilty plea to the charge of simple assault.¹ As part of his plea agreement, Cook received a sentence of 18 months' probation, and if he remained trouble free for the first 12 months, he could petition for early termination of his sentence. In this appeal, Cook claims the trial court erred in refusing to allow him to withdraw his guilty plea, post-sentence. Following a thorough review of Cook's appellate brief,² relevant law, and the certified record, we affirm.

¹ 18 Pa.C.S. § 2701(a)(1).

² The Commonwealth chose not to file a brief.

When considering the propriety of a trial court's denial of a motion to withdraw a guilty plea, we are bound by the determination of that court unless we find that it committed an abuse of discretion. ***Commonwealth v. Anthony***, 504 Pa. 551, 475 A.2d 1303 (1984). As stated above, the post-sentence standard to be applied when determining a motion to withdraw is whether a manifest injustice would result from the denial of the motion. A showing of "manifest injustice" to justify a withdrawal of a guilty plea requires a showing that the plea was involuntary or was entered without knowledge of the charge. ***Commonwealth v. Shaffer***, 498 Pa. 342, 446 A.2d 591 (1982); ***Commonwealth v. Warren***, 307 Pa. Super. 221, 453 A.2d 5 (1982).

Commonwealth v. Mobley, 581 A.2d 949, 952 (Pa. Super. 1990).

Courts may permit a defendant to withdraw his or her plea of guilty after sentence has been imposed only where the defendant makes a showing of prejudice that results in a manifest injustice. Manifest injustice may be established if the plea was not tendered knowingly, intelligently, and voluntarily. ***Commonwealth v. Persinger***, 532 Pa. 317, 615 A.2d 1305 (1992).

In addition, in determining whether a plea has been voluntarily entered, an examination of the totality of the circumstances is warranted. ***Commonwealth v. Allen***, 557 Pa. 135, 147, 732 A.2d 582, 588-89 (1999).

Commonwealth v. Hodges, 789 A.2d 764, 765 (Pa. Super. 2002).

Here, the trial court reviewed the totality of the circumstances of the guilty plea and determined there had been no manifest injustice. We find no abuse of discretion in that determination.

Cook argued that his guilty plea was involuntary because he had not taken his medication prior to the plea, and as a result, he was prone to make impulsive decisions. In this regard, he claims he admitted to

assaulting his then-girlfriend/now-wife when he had not done so.³

Regarding this claim, the trial court commented:

While the Court generally found [Cook] to be credible, the underlying claims do not rise to the level of establishing a manifest injustice. No evidence was presented on what medication, if any, he was prescribed and not taking on July 24, 2012, nor was any evidence presented on what effect, if any, the failure to take the medication would have on a patient's ability to fully think through a presenting problem. [Cook] was vague on what mental health treatment he was receiving. He stated he was not currently in any treatment or on any medication. Transcript December 31, 2012, pp. 6, 13. He also said he was discharged as a patient for missing appointments. Transcript December 31, 2012, p. 14.

No testimony or evidence was presented on how his plea of guilty was "impulsive". [Cook] was offered a probationary sentence, at the lowest end of the guideline range for sentencing. The victim, [Cook's] girlfriend, now wife was present at his plea hearing. He was represented by an attorney

³ At his guilty plea hearing, Cook agreed to the facts as set forth in the affidavit of probable cause for his arrest. The affidavit states:

On the 6 March 2011 on or about 2135hrs the North Franklin Police were called to 151 Iola St. for a domestic assault. This was the second call to this residence on this date for a domestic. Police interviewed the victim, Nicole Kent. Kent stated that she and Cook had been fighting all day. Cook was angry because there was no more heroin in the residence. They began to argue. Cook shoved her against the kitchen counter. Officers did view a mark across her lower back. She also stated that Cook was pushing her around the house. She showed officers a large lump on her right wrist. She did not know how it happened but that he struck her with something. The victim stated that she was in fear for her life and that Cook told her that he would kill her if he went to jail.

Affidavit of Probable Cause, Police Criminal Complaint, 3/6/11/, at 5.

who told the Court that he had known [Cook] for some time and that he, the attorney, had observed how well [Cook] was doing in his recovery from heroin addiction. Transcript July 24, 2012 pp. 7, 8.

Additionally, at the plea hearing [Cook] answered the following questions by the Judge.

THE COURT: You wish to enter a plea of guilty and accept the plea offer extended by the Commonwealth, is that true?

[Cook]: That's correct. (p.3)

THE COURT: are you under the influence of alcohol or controlled substance or any medication that would impair your ability to think clearly?

[Cook]: No, Ma'am. (p.7)

There was no evidence that [Cook] was not thinking rationally at the plea hearing or that the plea was the product of an improper impulse.

Trial Court Opinion, 4/17/13, at 2-3.

In addition to the facts recited by the trial court, we also note that Nicole Kent Cook, the victim, testified at the plea hearing and told the court that she supported both the probationary sentence and the way in which the case was being handled. **See** N.T. Guilty Plea, 7/24/12, at 5.

The certified record demonstrates the trial court considered the totality of the circumstances of the negotiated guilty plea and found Cook's plea was neither impulsive nor the result of having failed to take medication. The

certified record supports that determination and we find no abuse of discretion therein.

Next, Cook claims he felt threatened by both the District Attorney and his wife, and therefore his plea was not voluntary.⁴ The trial court stated:

The Court also rejected [Cook's] claim that his plea was not voluntary, that it was the product of coercion. [Cook] and the victim, Nicole Kent Cook, came to Court on July 24, 2012 expecting for the charges to be withdrawn, as the victim did not wish to prosecute. Apparently, when the victim informed the District Attorney of this, the District Attorney told the victim that if she testified that the incident didn't happen, the District Attorney and/or the police would file a criminal charge of False Reports against her. The victim then asked [Cook] to plead guilty and receive probation to avoid her being possibly charged. Transcript December 31, 2012, pp. 5, 9, 14, 15.

[Cook] confuses a difficult dilemma he faced with coercion. The fact remains that the North Franklin Township Police, who took the original complaints relating to a domestic dispute occurring on March 6, 2011, could have charged Mrs. Cook with making false reports had she testified in a way that gave them probable cause to believe that she had indeed made a false report on that date. Pointing that fact out to the victim is not coercion of [Cook]. Legitimate police action cannot be coercion. ***Commonwealth v. Gillespie***, 573 Pa. 100, 821 A.2d 1221 (Pa. 2003). Coercion requires more than the mere stating of facts, regardless of the harshness of that information. Coercion implies the use of lies or prolonged argument that vitiates one's ultimate free will.

Again, a review of the plea and sentencing hearing is illustrative.

⁴ Cook's appellate brief comingled his claims of impulsiveness and coercion. Because the trial court addressed them separately, we shall as well.

THE COURT: And you have entered your plea intelligently, freely and voluntarily today, no one is forcing you to do so, and you wish to accept the plea offer extended?

[Cook]: I do. (p.7)

[Cook] did not establish that he was coerced into pleading guilty.

Trial Court Opinion, 4/17/13, at 3-4.

Our review of the certified record finds no abuse of discretion in the trial court's determination. There is nothing in the notes of testimony from either hearing to support Cook's bald assertion that he was pressured by the Commonwealth and his wife into accepting the plea agreement. It appears that both Cook and his wife appeared in court on July 24, 2012, expecting the charges against Cook to be dropped because Kent Cook no longer wanted to prosecute. **See** N.T. Guilty Plea, 7/24/12, at 4. However, the Commonwealth, Cook, and Kent Cook arrived at a resolution that allowed Cook to remain at home, with his wife and the ability to terminate his probation early, if he complied with the terms of his probation. Cook testified he had spoken with his lawyer regarding the plea offer. He also admitted he had assaulted Kent Cook. Finally, he stated he was entering into the plea of his own free will.

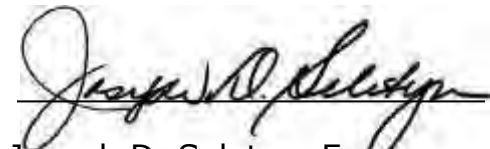
In addition to the facts presented in the trial court's opinion, we also note that at the hearing on his post-sentence motion to withdraw his plea, Cook testified he had not considered the difficulties of being on probation

when he accepted the plea and that he actually had not assaulted his wife, but that he only said he did because he did not want her to face prosecution for filing a false police report. However, he could not explain why he now felt it was acceptable for her to face charges after it was pointed out to him that his wife would still face that charge if he withdrew his plea and she recanted. We believe this also supports the trial court's decision.

In light of the foregoing, we find no basis upon which to disturb the trial court's determination that Cook did not present evidence of a manifest injustice, such that he should be allowed to withdraw his guilty plea post-sentencing.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/31/2013